

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

In re Mutual Funds Investment Litigation)	No. 04-md-15863
)	Civil No. JFM-04-0876
This Document Relates To:)	
Alger Subtrack)	
)	
Peter D. DeMayo v. Alger Small)	
Portfolio, et al.,)	

[PROPOSED AMENDED] INVESTOR CLASS ORDER

For the reasons stated in the Court’s November 3, 2005 letter memorandum, implementing instructions, and the Investor Class Opinion and Order in the *Janus* subtrack, it is, **HEREBY ORDERED:**

1. All claims against The Alger Fund, The Alger American Fund, The Alger Institutional Fund, and The Spectra Fund are dismissed without leave to amend;
2. The motions filed on behalf of Alger Associates, Inc.; Fred Alger & Company, Inc.; Fred Alger Management, Inc.; Alger Shareholder Services, Inc.; Fred M. Alger, III; James P. Connelly, Jr.; Daniel C. Chung; and Gregory S. Duch (collectively, “Alger”) are:
 - a. Denied as to all claims under the Exchange Act of 1934 (Counts IV and V);
 - b. Granted as to all claims under the Securities Act of 1933 (Counts I, II, and III) without leave to amend;
 - c. Granted as to claims under Sections 34(b) and 36(a) of the Investment Company Act (Counts VI and VII) and the related claims under Section 48(a) of the ICA (Count IX) without leave to amend;
 - d. Denied as to claims under Section 36(b) of the ICA (Count VIII) and the related claims under Section 48(a) of the ICA (Count IX);

- e. Granted as to state law claims (Counts X, XI, XII and XIII) but plaintiffs are granted leave to serve and file a second amended consolidated complaint within a deadline to be set after conferring with counsel;

3. The motion filed on behalf of John T. Sargent; Arthur M. Dubow; Stephen E. O'Neil; Nathan E. Saint-Amand; B. Joseph White; Charles F. Baird, Jr.; Roger P. Cheever; and Lester L. Colbert, Jr. is:

- a. Deferred as to all claims under the Exchange Act of 1934 (Counts IV and V);
- b. Granted as to all claims under the Securities Act of 1933 (Counts I, II, and III) without leave to amend;
- c. Granted as to claims under Sections 34(b) and 36(a) of the Investment Company Act (Counts VI and VII) and the related claims under Section 48(a) of the ICA (Count IX) without leave to amend;
- d. Deferred as to claims under Section 36(b) of the ICA (Count VIII) and the related claims under Section 48(a) of the ICA (Count IX);
- e. Granted as to state law claims (Counts X, XI, XII and XIII) but plaintiffs are granted leave to serve and file a second amended consolidated complaint within a deadline to be set after conferring with counsel;

4. The motions filed by Aurum Capital Management Corp., Veras Investment Partners, LLC, and Wilshire Associates Incorporated are: ¹

- a. Denied as to the claim under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (Count IV);

¹ Investments by Planners, Inc. f/k/a Saginor Group and Peconic Partners, LLC did not move to dismiss the Consolidated Amended Class Action Complaint.

- b. Granted as to state law claims (Count XIII) but plaintiffs are granted leave to serve and file a second amended consolidated complaint within a deadline to be set after conferring with counsel;

5. Pursuant to this Court's order dated December 8, 2004, this action is stayed as to defendants Canary Capital Partners, LLC; Canary Investment Management, LLC; and Canary Capital Partners, Ltd.; and Edward Stern;

6. All claims are dismissed against Kaplan & Company Securities, Inc.; Kopstein, Van Alen, Nash & Co.; Merrill Lynch & Co., Inc.; Securities America, Inc.; and Salomon Smith Barney, now known as Citigroup Global Markets, Inc., (a) with prejudice and without leave to amend as to all claims under federal law, (b) but as to state law claims (Count XIII), plaintiffs are granted leave to serve and file a second amended consolidated complaint within a deadline to be set after conferring with counsel; and

7. The motion filed by The Bear Stearns Companies, Inc. is:

- a. Denied as to the claim under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (Count IV);
 - b. Granted as to state law claims (Count XIII) but plaintiffs are granted leave to serve and file a second amended consolidated complaint within a deadline to be set after conferring with counsel.

8. The motion filed by Bank of America Corporation is:

- a. Deferred as to claims under the Exchange Act of 1934 (Count IV);
 - b. Granted as to state law claims (Count XIII) but, if Bank of America Corporation is held to be a proper defendant, then plaintiffs are granted leave to amend the

consolidated amended class action complaint within a deadline to be set after conferring with counsel.

Dated:

HON. J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE